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5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
7

8 DIANA SUAREZ RODRIGUEZ, by and CASE NO. 02-cv-6527 LJO GSA
9 through JESUS SUAREZ,

10
11 Plaintiff,

ORDER REGARDING PETITION
FOR MINOR'S COMPROMISE____
(Doc. 227)

12 vs.

13 NATIONAL RAILROAD PASSENGER
CORPORATION("AMTRAK"), et al.,

14 Defendants.
15 _____/

16 Plaintiff, Diana Suarez Rodriguez, is a minor in this action ("minor").¹ Pending before the
17 court is a Petition for Minor's Compromise ("Petition") which was filed on March 6, 2009, by Jesus
18 Suarez, the minor's uncle. (Doc. 227). The petition is supplemented by declarations from Peter
19 McNulty, the minor's attorney, and Jesus Suarez. ("Petitioner").

20 The minor's claim involves a train and a van accident that resulted in the wrongful death of
21 Eloy Suarez, the minor's father. On February 19, 2009, Defendants National Railroad Passenger
22 Corporation, the Burlington Northern and Santa Fe Railroad Company, Walter Ward, and William
23 Dike notified that court that the matter had settled as to all parties. (Doc. 221).

24 The Petition indicates that the minor's gross settlement amount is \$50,000.00. The petition
25 request that \$12,500.00 (25%) of the minor's settlement proceeds be paid to attorney Peter McNulty
26 for attorney's fees, and that \$2,453.37 of the minor's settlement proceeds be paid for costs of the
27 _____

28 ¹ The minor is ten years of age and currently resides in Mexico.

1 litigation.² After attorney's fees and costs are deducted from the settlement proceeds, the minor will
2 receive a net settlement amount of \$ 35,046.63.00. Petitioner requests that the court order the
3 purchase of an annuity from Metropolitan Life Insurance Company for the minor which will yield a
4 total payout of \$58,170.00 to be paid on November 18, 2019, when the minor turns twenty-one (21)
5 years old.

6 This Court's Local Rule 17-202 addresses settlements for minors and provides in pertinent
7 part:

8 (b) Settlement. No claim by . . . a minor . . . may be settled or compromised
9 absent court order by the assigned Judge or Magistrate Judge approving the settlement
10 or compromise.

11 . . .

12 (2) The approval of a proposed settlement shall be filed and calendared
13 pursuant to L.R. 78-230. Such application shall disclose, among other
14 things, the age and sex of the minor . . . , the nature of the causes of
15 action to be settled or compromised, the facts and circumstances out of
16 which the causes of action arose, including the time, place and persons
17 involved, the manner in which the compromise amount or other
18 consideration was determined, including such additional information
19 as may be required to enable the Court to determine the fairness of the
20 settlement or compromise ...

21 (c) Disclosure of Attorney's Interest. When the minor . . . is represented by an
22 attorney, it shall be disclosed to the Court by whom and the terms under which the
23 attorney was employed, whether the attorney became involved in the application at
24 the instance of the party against whom the causes of action are asserted directly or
25 indirectly, whether the attorney stands in any relationship to said party, and whether
26 the attorney has received or expects to receive any compensation, from whom, and the
27 amount.

28 . . .

(e) Payment of Judgment. Whenever money . . . is recovered on behalf of a
minor . . . the money . . . will be (1) disbursed to the representative pursuant to state
law upon a showing that he is the duly qualified representative under state law, (2)
disbursed otherwise pursuant to state law, or (3) disbursed pursuant to such other
order as the Court deems proper for the protection of the minor . . .

As a preliminary matter, the court notes that the Petition submitted on the minor's behalf is
full of typographical errors, inconsistencies, and contains irrelevant data. Moreover, the Petition

² It is unclear from the petition whether the \$2,453.27 are the total costs of the litigation, or only relate to this particular minor since Ezequiel Saurez Rodriguez's (the minor's brother) petition filed on the same day includes the same amount. If the costs relate only to this minor, it is unclear how this amount was determined.

1 does not include information necessary for this court to make a recommendation regarding the merits
2 of the Petition. For example, there is a general statement that the request for costs totaling
3 \$2,453.37.00 consisted of filing fees, expert fees/costs, depositions, and other incidental litigation
4 costs reasonably incurred in preparation for trial. Pet. at 6. However, there is no specific breakdown
5 of the costs, such as what they were, and when they were paid. Additionally, while there is a request
6 for attorney's fees in the amount of \$12,500.00, the court cannot determine if this fee is reasonable
7 because the declaration of Mr. McNulty fails to provide an itemized list of costs and services
8 provided.³

9 The information regarding the annuity is similarly deficient. For example, there is no
10 information about the annuity that is to be purchased from Metropolitan Life Insurance Company.
11 Although the petition states that this annuity has an "A plus XV rating," no information about the
12 rating system was provided so the court has no basis to determine what this means. Pet. at 6: 18-19.
13 It is also unclear who will manage the annuity. For example, there is no indication what
14 arrangements will be made to ensure that the minor receives the money on her twenty-first birthday
15 given that she is in Mexico.

16 The only information provided to the court regarding the annuity is a sheet entitled
17 "February 25, 2009, Settlement Proposal for Diana Suarez" which is attached to the Petition. Pet. at
18 Exhibit 1. This sheet was prepared by an individual named Tom Walsh from Mesirow Financial
19 Structured Settlements. However, it is unclear who Tom Walsh is, and the quoted payment amount
20 for the structure settlement is only valid until March 5, 2009, which expired before the Petition was
21 even filed. Moreover, the amount on the quote is \$58,169.97, but the amount requested in the
22 petition is \$58,170.

23 Finally, while the Petitioner, Jesus Suarez, submits this Petition as the minor's uncle and
24 guardian ad litem, it does not appear that an application to be the minor's guardian ad litem was ever
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26
27 ³ The petition makes reference to the declaration of Peter McNulty, which sets forth that the fees are reasonable
28 and justified given the lengthy and extensive litigation conducted to reach the settlement, but this is not sufficient information
for the court to determine that the attorney fees are reasonable. Petition at pg. 5:21-24.

1 filed with this court.⁴ [Federal Rule of Civil Procedure 17](#) (c) in relevant section states :

2 (1) With a representative. The following representatives may sue or defendant may sue on
3 behalf of a minor or an incompetent person :

4 (A) a general guardian;

5 (B) a committee;

6 (C) a conservator;

7 (D) a like fiduciary

8 (2) Without a Representative. A minor or an incompetent person who does not have a duly
9 appointed representative may sue by a next of friend or by a guardian ad litem. *The court*
10 *must appoint a guardian ad litem* - or issue another appropriate order-to protect a minor or
11 incompetent person who is unrepresented in an action.
12 [Fed. R. Civ. Proc. 17\(c\)](#) (Emphasis added).

13 Therefore, Mr. Suarez needs to establish that this court has appointed him as a guardian ad
14 litem, or alternatively, file an application to be appointed guardian ad litem in conjunction with the
15 Petition. The court notes that it is unclear why the minor's mother, Edith Rodriguez Hernandez, is
16 not the guardian ad litem. The court assumes that the minor's mother is in Mexico with the minor,
17 however it is not clear from the Petition. This information needs to be provided to the court.

18 Given the deficiencies above, the court does not have enough information to make a
19 recommendation that this Petition be approved, or to determine whether a hearing is necessary.
20 Accordingly, IT IS HEREBY ORDERED that the additional information be provided as outlined
21 above within 10 (ten) court days of this order.

22 IT IS SO ORDERED.

23 **Dated: March 17, 2009**

24 **/s/ Gary S. Austin**
25 UNITED STATES MAGISTRATE JUDGE

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27 ⁴ This action was brought by Jesus Suarez as the minor's guardian et litem in an amendment to the complaint filed
28 on April 12, 2004. (Doc 56). However, it does not appear that this court issued an order appointing Mr. Suarez as the
minor's guardian et litem.